IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.116 OF 2006

M/s.Royal Oil Field Pvt.Ltd. .. Petitioner
V/s
Union of India & Ors. .. Respondents

Mr.Vikram Nankani i/by Mr.Madhur R.Baya for the Petitioner.

Mr.B.A.Desai, Addl.Solicitor General with Ms.Nameeta Kumar for the Respondents.

CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 23.02.2006.

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned Additional Solicitor General for the Respondents. By this petition, the Petitioner is challenging four Show Cause Notices dated 20th December, 2005 wherein 35 consignments are involved. This Court by an order dated 5th October, 2005 passed in Writ Petition No.2611 of 2005 (which was filed by the Petitioner herein) had quashed the earlier show cause notice on the ground that the said notice had been issued mechanically and without application of mind. In paragraph No.15 of the said order this Court had observed that the quashing of the Show Cause Notice would not preclude the Department from issuing fresh show cause notice for rejecting the invoice value before passing the final assesment order **by disclosing the material, if any,** for rejecting the invoice value. In view of specific direction of this Court, the concerned authority while issuing the show cause notices before

passing the final assessment order ought to have disclosed the material before rejecting the invoice value. However the impugned show cause notices have been issued without disclosing the materials inspite of the order passed by this Court. Moreover, during the pendency of the present petition, the assessing officer has passed an order adjudicating the said show cause notices.

2. The Petitioner has amended the petition and has annexed four Orders-in-Original dated 5th January, 2006 passed by the learned Joint Commissioner of Customs. On perusal of the same, it is apparent that no fair opportunity was given to the petitioner. The said orders passed by the Joint Commissioner of Customs are in defiance of this Court's order dated 5th October, 2005. The learned Additional Solicitor General has contended that the aforesaid orders are not an exparte orders as opportunity was given to the Petitioner to appear before the adjudicating authority but the Petitioner failed to appear before the authority. He further submitted that the Petitioner must be directed to file appeal against the impugned orders.

3. Although the show cause notice does not disclose the naterials, it says that the Petitioner can take inspection. In this view of the matter we think it proper to permit the Petitioner to take inspection of the documents which the revenue intends to rely and file

its reply accordingly. So far as the adjudication orders are concerned, in our opinion the said orders have been passed in undue haste. We depricate the conduct of the officer in issuing the show cause notice by totally ignoring the direction given by this Court in the order dated 5th October 2005 passed in Writ Petition No.2611 of 2005 and then directing the Petitioner to take inspection and file reply within 10 days. As the Petitioner has filed the present petition to expose the above conduct, the matter was adjourned for the Petitioner to take inspection and in the meantime the impugned orders have been passed. In these circumstances we quash and and set aside all the aforesaid four orders dated 5th January, 2006 passed by Mr.Rajeev Yadav, the learned Joint Commissioner of Customs. As all the orders have been passed in defiance of what this Court had directed by an earlier order dated 5th October, 2005, we direct the Commissioner of Customs to hear the matters afresh either by himself or by any other officer nominated by him (other than the officer who has passed the impugned orders), on the same show cause notices. We however make it clear that before proceeding with the hearing, the concerned officer ought to disclose all the material to the Petitioner so as to enabe the Petitioner to meet the same. The Petitioner is at liberty to lead the evidence to substantiate his contention. Writ petition stands disposed of accordingly.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)